

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 14, 2006

STATE OF TENNESSEE v. RICK CARL DAVIS

Direct Appeal from the Criminal Court for White County
No. CR-1297 Lillie Ann Sells, Judge

No. M2004-00565-CCA-R3-CD - Filed March 15, 2006

The defendant, Rick Carl Davis,¹ was convicted of aggravated assault, a Class C felony, and fined \$2,500. See Tenn. Code Ann. § 39-13-102 (1997). The trial court imposed a Range I sentence of six years to be served in the Department of Correction and to be served consecutively to a sentence for a prior probation violation. In this appeal as of right, the defendant contends that the trial court erred by (1) imposing an excessive sentence; (2) denying alternative sentencing; and (3) ordering consecutive sentencing. The judgment is affirmed.

Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed

GARY R. WADE, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

Joe L. Finley, Jr., Assistant Public Defender, for the appellant, Rick Carl Davis.

Paul G. Summers, Attorney General & Reporter; Benjamin A. Ball, Assistant Attorney General; and William Locke, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On October 1, 2002, the defendant struck the victim, Jeff Caldwell, in the head with a baseball bat during an argument in a Wal-Mart parking lot in Sparta. He was charged with and ultimately convicted of aggravated assault. The testimony that was transcribed and included in the record includes only two witnesses for the state and the defense's proof. The trial transcript does not include the testimony of the victim and other possible state witnesses and includes only a portion of the testimony of the victim's girlfriend, Tina Bane.

¹The defendant's first name also appears in the record as "Ricky." It is the policy of this court to conform the spelling of the defendant's name to the spelling found in the indictment.

At trial, Lisa Hill, a Wal-Mart customer, testified for the state. She stated that she saw the victim in the parking lot shortly before the altercation and overheard him tell a woman to "just get away from [him] and leave [him] alone." She recalled that after entering the store and making her purchases, she returned to the parking lot, where she again observed the victim telling the woman to "go away and leave [him] alone." She testified that the victim then threw his hat onto a car and repeated his plea for the woman to leave. At that point, Ms. Hill saw the defendant, accompanied by another man, step out of his car and reach for something in his trunk. Ms. Hill testified that she reentered the store and informed employees of a possible confrontation, and, after ten or fifteen seconds, returned to the parking lot to find the victim lying on the pavement saying, "[O]h, my God, I'm blind, I can't see." Ms. Hill recounted the course of events to the officer who responded to the incident but, by then, both the victim and the defendant had left the scene.

The officer, Sparta City Police Department Sergeant Travis Barker, testified that he questioned witnesses at the scene and then drove to the hospital to interview the victim and his girlfriend. He recalled that the victim may have had a concussion and that his head was bandaged. The officer located the defendant on the following day and questioned him about the incident. He stated that the defendant initially described the incident as an exchange of words but later admitted to hitting the victim with a baseball bat. When Officer Barker placed the defendant under arrest, the defendant claimed self-defense.

Julia Baker, a defense witness, asserted that she observed a portion of the argument but left before any physical contact. She contended that she heard the victim threaten the defendant, "cussing him, running toward him, doing all kinds of things to him." Ms. Baker, who admitted that she did not see the baseball bat, stated that after hearing the threats, she and her children left the parking lot.

John Twilla, also a defense witness, testified that while parked in his vehicle, he heard the victim and a woman talking loudly and saw the victim lunge toward the defendant, who was sitting in a car. He stated that he "assumed [the victim] had hit [the defendant]" but could not actually see any contact. According to Twilla, he heard the victim taunt the defendant. He explained that he did not think that the incident was "a serious thing" and described the victim as "hot-headed." On cross-examination, Mr. Twilla acknowledged that he did not witness the entire incident because "it wasn't [his] business."

At the sentencing hearing, Chet Darby, Investigating Officer with the Board of Probation and Parole, highlighted portions of the presentencing report. He recited four pages of the defendant's criminal history, which consisted of several traffic offenses, convictions for illegal drug possession, possession of drug paraphernalia, reckless endangerment, public intoxication, contributing to the delinquency of a minor, and multiple juvenile offenses, including burglary and larceny. Officer Darby testified that since his conviction for aggravated assault in the present case, the defendant had been charged with criminal intent to manufacture drugs, possession of drug paraphernalia, and theft under \$500. At the time of the aggravated assault, the defendant was on probation for convictions

of illegal drug possession and reckless endangerment. While on probation, he had tested positive for methamphetamine in a drug screen.

The defense introduced three letters from the staff at the local jail that indicated the defendant had been a well-behaved prisoner. The defendant insisted that he acted in self-defense when he struck the victim, arguing that the victim had threatened him and then hit him twice before he used the bat, which "didn't hurt [the victim]." It was his contention that the incident was caused by a woman who was attempting to upset the victim by flirting with the defendant, "playing" both of them. The defendant asserted that both he and the victim were under the influence of drugs at the time of the incident and that he just wanted to take the woman to her mother's house but "it got all turned around." He admitted that he had not worked in two years because of his addiction to drugs but promised not to abuse drugs in the future. He claimed that he had a job "waiting" for him if granted probation and apologized for his part in the altercation.

At the conclusion of the hearing, the trial court found that the defendant had a long history of criminal activity, see Tenn. Code Ann. § 40-35-114(2) (2003), as well as a previous history of unwillingness to comply with the conditions of a sentence involving release in the community, see Tenn. Code Ann. § 40-35-114(9) (2003). The court placed little weight on the defendant's remorse as a mitigating factor and did not recognize his good jail behavior as mitigation. The trial court imposed the maximum sentence of six years. The trial judge denied probation after determining that the defendant was a danger to society because of his continuous criminal conduct, see Tenn. Code Ann. § 40-35-103(1)(A), that less restrictive measures than confinement had not been successful, see Tenn. Code Ann. § 40-35-103(1)(C), that a sentence of full probation would depreciate the seriousness of the offense, see Tenn. Code Ann. § 40-35-103(1)(B), and that confinement would provide an effective deterrent, see Tenn. Code Ann. § 40-35-103(1)(B). Finally, in ordering consecutive sentencing, the trial court found the defendant had an extensive record of criminal activity and had committed the offense while on probation. See Tenn. Code Ann. § 40-35-115(b)(2), (6).

The defendant contends that the trial court erred by improperly weighing the enhancing and mitigating factors in violation of Blakely v. Washington, 542 U.S. 296 (2004), improperly ordering a fully incarcerative sentence, and improperly ordering consecutive sentencing.

When there is a challenge to the length, range, or manner of service of a sentence, it is the duty of this court to conduct a de novo review with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d) (2003). This presumption is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991); see State v. Jones, 883 S.W.2d 597, 600 (Tenn. 1994). "If the trial court applies inappropriate factors or otherwise fails to follow the 1989 Sentencing Act, the presumption of correctness falls." State v. Shelton, 854 S.W.2d 116, 123 (Tenn. Crim. App. 1992). The Sentencing Commission Comments provide that the burden is on the defendant to show the impropriety of the sentence. Tenn. Code Ann. § 40-35-401, Sentencing Comm'n Comments.

Our review requires an analysis of (1) the evidence, if any, received at the trial and sentencing hearing; (2) the presentence report; (3) the principles of sentencing and the arguments of counsel relative to sentencing alternatives; (4) the nature and characteristics of the offense; (5) any mitigating or enhancing factors; (6) any statements made by the defendant in his own behalf; and (7) the defendant's potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-102, -103, -210 (2003); State v. Smith, 735 S.W.2d 859, 863 (Tenn. Crim. App. 1987).

I.

The defendant first asserts that his sentence is excessive. He argues that the trial court failed to properly weigh the enhancement and mitigating factors and asks this court to review the sentence under Blakely v. Washington, 542 U.S. 296 (2004). In particular, the defendant argues that the trial court had no authority to enhance the sentence beyond the minimum of three years without the intervention of a jury and that the trial court improperly weighed the enhancement and mitigation factors. The state contends that the Blakely claim has been waived and that the trial court properly exercised its discretion in considering the factors.

A Range I sentence for aggravated assault, a Class C felony, is three to six years. Tenn. Code Ann. § 40-35-112(c)(3) (2003). The trial court imposed a six-year sentence based on the following enhancement factors: (2) that the defendant has a history of prior convictions or criminal behavior in addition to those necessary to establish the appropriate range; and (9) that the defendant has a previous history of unwillingness to comply with the conditions of a sentence involving release in the community. See Tenn. Code Ann. § 40-35-114(2), (9). The trial court did not find his good behavior in jail to be a mitigating factor and placed "little or no weight" on the defendant's level of remorse.

In calculating the sentence for a Class C felony conviction, the presumptive sentence is the minimum in the range if there are no enhancement or mitigating factors. Tenn. Code Ann. § 40-35-210(c) (2003). If there are enhancement but no mitigating factors, the trial court may set the sentence above the minimum, but still within the range. Tenn. Code Ann. § 40-35-210(d). A sentence involving both enhancement and mitigating factors requires an assignment of relative weight for the enhancement factors as a means of increasing the sentence. Tenn. Code Ann. § 40-35-210(e). The sentence should then be reduced within the range by any weight assigned to the mitigating factors present. Id. The weight to be assigned to the appropriate enhancement and mitigating factors falls within the sound discretion of the trial court so long as that court complies with the purposes and principles of the 1989 Sentencing Act and its findings are supported by the record. State v. Boggs, 932 S.W.2d 467, 475 (Tenn. Crim. App. 1996). If the trial court's findings of fact are adequately supported by the record, this court may not modify the sentence even if it would have preferred a different result. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

The first enhancement factor applied by the trial court was the defendant's previous history of criminal convictions in addition to those necessary to establish the appropriate range. See Tenn.

Code Ann. 40-35-114(2). The court placed particular emphasis on the drug-related offenses and the numerous traffic violations. The presentence report confirmed convictions for reckless endangerment, possession of marijuana, two counts of public intoxication, possession of drug paraphernalia, disorderly conduct, contributing to the delinquency of a minor, and fourteen traffic offenses. The defendant does not challenge the applicability of this factor.

The defendant does contend that the trial court improperly used the defendant's "previous history of unwillingness to comply with the conditions of a sentence involving release in the community," see Tenn. Code Ann. 40-35-114(9), as an enhancement factor in violation of Blakely. Previously, in State v. Chester Wayne Walters, No. M2003-03019-CCA-R3-CD, slip op. at 21 (Tenn. Crim. App., at Nashville, Oct. 4, 2004, as corrected Dec. 10, 2004), this court had rejected the state's position. Recently, however, in State v. Gomez, 163 S.W.3d 632, 650 (Tenn. 2005), a majority of our supreme court held that where a defendant has failed to properly raise and preserve a Blakely challenge, he is limited to seeking relief via plain error review.

Prior to the decision in Gomez, this court had observed that the United States Supreme Court's opinion in Blakely called into question the continuing validity of our current sentencing scheme. In that case, the Court, applying the rule in Apprendi v. New Jersey, 536 U.S. 466, 490 (2000), struck down a provision of the Washington sentencing guidelines that permitted a trial judge to impose an "exceptional sentence" upon the finding of certain statutorily enumerated enhancement factors. The Court observed that "the 'statutory maximum' for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely at 303. Finally, the Court concluded that "every defendant has a right to insist that the prosecutor prove to a jury [beyond a reasonable doubt] all facts legally essential to the punishment." Id. at 313. The Gomez majority, however, concluded that "[u]nlike the statutes at issue in Blakely and Booker, a judicial finding of an enhancement factor in Tennessee does not affect the range of punishment to which a defendant is exposed." Gomez, 163 S.W.3d at 659. The ruling in Gomez controls in this instance.

The record, however, appears to indicate that the trial court applied enhancement factor (9) because the defendant was on probation at the time he committed the present offense. Although the trial judge stated, "He's been revoked off of probation," it is not clear which probationary sentence was taken into consideration. In any event, the presentence report does not indicate that the defendant had been revoked from any other probationary sentence. The commission of the offense for which the defendant is being sentenced does not warrant the application of this enhancement factor. There must be a previous history of unwillingness to comply. State v. Adams, 45 S.W.3d 46, 60 (Tenn. Crim. App. 2000); State v. Hayes, 899 S.W.2d 175, 185-86 (Tenn. Crim. App. 1995). The trial court, however, could have applied factor (9) based on the presentence report, which indicated that the defendant tested positive for methamphetamine use while on probation for drug possession and reckless endangerment. Methamphetamine use demonstrates an unwillingness to comply with the conditions of probation, which is sufficient to warrant application of factor (9). State v. Oneal Sanford, No. E1999-02089-CCA-R3-CD, slip op. at 9 (Tenn. Crim. App., at Knoxville, June 18, 2001).

The defendant also contends that the trial court failed to properly consider two mitigating factors: remorse and good behavior as a prisoner. Initially, the defendant has failed to cite any authority in support of his argument. The failure to cite authority in support of an issue may constitute a waiver. Tenn. R. App. P. 27(a)(7). Nonetheless, the defendant acknowledged that he "was wrong for hitting [the victim]," but immediately followed with, "but they's still more to it than what was really told." He blamed a woman for his plight. Under these circumstances, the trial court properly placed little weight on the defendant's qualified remorse. With regard to the defendant's good behavior while incarcerated, the trial court considered that and placed no weight on the factor, concluding that the defendant had merely behaved while in jail as he should have. In any event, the significant prior criminal history would outweigh the few favorable facts. In our view, the trial court acted within its authority by imposing the maximum sentence in the range.

II.

The defendant next asserts that the trial court erred by ordering a fully incarcerative sentence. He contends that he should have been granted probation. The state argues that the trial court properly ordered the defendant to serve his sentence in confinement.

An alternative sentence is any sentence that does not involve total confinement. See State v. Fields, 40 S.W.3d 435 (Tenn. 2001). As a standard offender convicted of a class C felony, the defendant is presumed to be a favorable candidate for alternative sentencing. See Tenn. Code Ann. § 40-35-102(6) (2003). In addition, because the sentence imposed is eight years or less, the trial court was required to consider probation as a sentencing option. See Tenn. Code Ann. § 40-35-303(a), (b) (2003).

The trial court's determination of whether the defendant is entitled to an alternative sentence and whether the defendant is a suitable candidate for full probation are different inquiries with different burdens of proof. State v. Boggs, 932 S.W.2d 467, 477 (Tenn. Crim. App. 1996). When, as here, the defendant is entitled to the statutory presumption favoring alternative sentencing, the state must overcome the presumption by the showing of "evidence to the contrary." Ashby, 823 S.W.2d at 169; State v. Bingham, 910 S.W.2d 448, 455 (Tenn. Crim. App. 1995), overruled in part on other grounds by State v. Hooper, 29 S.W.2d 1 (Tenn. 2000); see Tenn. Code Ann. §§ 40-35-102(6), -103. Conversely, it is the defendant who has the burden of demonstrating his suitability for total probation. Bingham, 910 S.W.2d at 455; see Tenn. Code Ann. § 40-35-303(b). The defendant must demonstrate that probation would "subserve the ends of justice and the best interests of both the public and the defendant." Hooper v. State, 297 S.W.2d 78, 81 (Tenn. 1956). Among the factors applicable to probation consideration are the circumstances of the offense; the defendant's criminal record, social history, and present condition; the deterrent effect upon the defendant; and the best interests of the defendant and the public. State v. Grear, 568 S.W.2d 285, 286 (Tenn. 1978).

In denying the defendant probation, the trial court found that the defendant was a danger to society because of his continuous criminal conduct, see Tenn. Cod Ann. § 40-35-103(1)(A), that

measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant, see Tenn. Code Ann. § 40-35-103(1)(C), that a sentence of full probation would depreciate the seriousness of the offense, see Tenn. Code Ann. § 40-35-103(1)(B), and that confinement would provide an effective deterrent, see Tenn. Code Ann. § 40-35-103(1)(B). The trial court considered the testimony at the sentencing hearing, the presentence report, arguments of counsel, the nature and characteristics of the offenses, all mitigating and enhancing factors, statements made by the defendant, and the defendant's potential for rehabilitation. See Tenn. Code Ann. §§ 40-35-102, -103, -210; State v. Smith, 735 S.W.2d 859, 863 (Tenn. Crim. App. 1987). The record established that the thirty-five-year-old defendant had an extensive criminal history. The defendant does not challenge the trial court's finding that confinement is necessary to protect society. Also, as previously discussed, the record established that the defendant had previously failed to comply with the conditions of his probation.

The defendant contends that the trial court erred by finding that granting probation would depreciate the seriousness of the offense. Before a trial court may deny an alternative sentence based upon the circumstances of the offense, those circumstances "must be 'especially violent, horrifying, shocking, reprehensible, offensive, or otherwise of an excessive or exaggerated degree,' and the nature of the offense must outweigh all factors favoring [an alternative sentence]." State v. Cleavor, 691 S.W.2d 541, 543 (Tenn. 1985); State v. Hartley, 818 S.W.2d 370, 374-75 (Tenn. Crim. App. 1991). In the light most favorable to the state, the proof established that the defendant retrieved a baseball bat from his car trunk and struck the unarmed victim in the head. Although the defendant acknowledged striking the victim, he asserted that "it didn't hurt him" and insisted that there was "still more to it than what was really told." Qualified remorse or qualified acknowledgment of culpability for his actions supports a finding that a sentence of confinement is necessary to avoid depreciating the seriousness of the offense. See State v. Gutierrez, 5 S.W.3d 641, 647 (Tenn. 1999); see also State v. Latisha Lee Morgan, No. W2003-02174-CCA-R3-CD, slip op. at 4 n.3 (Tenn. Crim. App., at Jackson, July 9, 2004) (holding that the defendant's lack of remorse was an appropriate factor in concluding that confinement was necessary to avoid depreciating the seriousness of the offense).

The defendant also asserts that the trial court erred by finding that confinement was particularly suited to provide an effective deterrence to others likely to commit similar offenses. Commenting on the difficulty of measuring deterrence, our supreme court in State v. Hooper, 29 S.W.3d 1, 10 (Tenn. 2000), held as follows:

Because the "science" of deterrence is imprecise at best, the trial courts should be given considerable latitude in determining whether a need for deterrence exists and whether incarceration appropriately addresses that need. Accordingly, we will presume that a trial court's decision to incarcerate a defendant based on a need for deterrence is correct so long as any reasonable person looking at the entire record could conclude that (1) a need to deter similar crimes is present in the particular community, jurisdiction, or in the state as a whole, and (2) incarceration of the

defendant may rationally serve as a deterrent to others similarly situated and likely to commit similar crimes.

Our high court then provided the following non-exhaustive list of factors to consider in determining whether a need for deterrence exists and whether incarceration is "particularly suited" to achieve that goal:

- 1) Whether other incidents of the charged offense are increasingly present in the community, jurisdiction, or in the state as a whole;
- (2) whether the defendant's crime was the result of intentional, knowing, or reckless conduct or was otherwise motivated by a desire to profit or gain from the criminal behavior;
- (3) whether the defendant's crime and conviction have received substantial publicity beyond that normally expected in the typical case;
- (4) whether the defendant was a member of a criminal enterprise, or substantially encouraged or assisted others in achieving the criminal objective;
- (5) whether the defendant has previously engaged in criminal conduct of the same type as the offense in question, irrespective of whether such conduct resulted in previous arrests or convictions.

State v. Fields, 40 S.W.3d 435, 441-42 (Tenn. 2001) (citing Hooper, 29 S.W.3d at 10-12).

Although the trial court found in this case that confinement would be "an effective [deterrent] to others who are likely to commit these kinds of offenses," it failed to make findings of fact that would tend to demonstrate a need for deterrence. See id. at 442. There is no indication as to why confinement would be "particularly suited to provide an effective deterrence." Thus, the denial of probation cannot be based on this factor.

That confinement was necessary to avoid depreciating the seriousness of the offense and to protect society by restraining a defendant who has a long history of criminal conduct, and that measures less restrictive than confinement have been unsuccessful do, however, serve as proper grounds for the denial of probation. Thus, the defendant has failed to establish suitability for probation.

III.

As his final issue, the defendant contends that the trial court erred by ordering his sentence in this case to be served consecutively to the sentence for a prior conviction wherein his probation had been revoke. The state submits that consecutive sentencing is proper because the defendant had an extensive record of criminal activity and because he was sentenced for an offense committed while on probation. See Tenn. Code Ann. § 40-35-115(b)(2), (6) (2003).

Tennessee Rule of Criminal Procedure 32, which addresses sentencing where the defendant has prior unserved sentences, provides in pertinent part as follows:

If the defendant has additional sentences not yet fully served as the result of convictions in the same court or in other courts of this state and if this fact is made known to the court prior to sentencing, the court shall recite this in the judgment setting sentence, and the sentence imposed shall be deemed to be concurrent with the prior sentence or sentences, unless it affirmatively appears that the new sentence being imposed is to be served consecutively with the prior sentence or sentences. The judgment to make the sentences consecutive or concurrent shall explicitly recite the judge's reasons therefore, and is reviewable on appeal.

Tenn. R. Crim. P. 32(c)(2).

Prior to the enactment of the Criminal Sentencing Reform Act of 1989, the limited classifications for the imposition of consecutive sentences were set out in Gray v. State, 538 S.W.2d 391, 393 (Tenn. 1976). In that case, our supreme court ruled that aggravating circumstances must be present before placement in any one of the classifications. Later, in State v. Taylor, 739 S.W.2d 227 (Tenn. 1987), our high court established an additional category for those defendants convicted of two or more statutory offenses involving sexual abuse of minors. There were, however, additional words of caution:

[C]onsecutive sentences should not routinely be imposed . . . and . . . the aggregate maximum of consecutive terms must be reasonably related to the severity of the offenses involved.

Taylor, 739 S.W.2d at 230. The Sentencing Commission Comments adopted the cautionary language. Tenn. Code Ann. § 40-35-115, Sentencing Comm'n Comments. The 1989 Act is, in essence, the codification of the holdings in Gray and Taylor; consecutive sentences may be imposed in the discretion of the trial court only upon a determination that one or more of the following criteria² exist:

- (1) The defendant is a professional criminal who has knowingly devoted himself to criminal acts as a major source of livelihood;
- (2) The defendant is an offender whose record of criminal activity is extensive;
- (3) The defendant is a dangerous mentally abnormal person so declared by a competent psychiatrist who concludes as a result of an investigation prior to

²The first four criteria are found in Gray. A fifth category in Gray, based on a specific number of prior felony convictions, may enhance the sentence range but is no longer a listed criterion. See Tenn. Code Ann. § 40-35-115, Sentencing Comm'n Comments.

sentencing that the defendant's criminal conduct has been characterized by a pattern of repetitive or compulsive behavior with heedless indifference to consequences;

(4) The defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high;

(5) The defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of defendant's undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical and mental damage to the victim or victims;

(6) The defendant is sentenced for an offense committed while on probation; or

(7) The defendant is sentenced for criminal contempt.

Tenn. Code Ann. § 40-35-115(b).

The length of the sentence, when consecutive in nature, must be “justly deserved in relation to the seriousness of the offense,” Tenn. Code Ann. § 40-35-102(1), and “no greater than that deserved” under the circumstances, Tenn. Code Ann. § 40-35-103(2); State v. Lane, 3 S.W.3d 456 (Tenn. 1999).

The trial court ordered consecutive sentences based on the defendant's extensive record of criminal activity and the fact that the defendant committed the aggravated assault while on probation. See Tenn. Code Ann. § 40-35-115(b)(2), (6). As we previously indicated, the presentence report established that the defendant had been convicted of reckless endangerment, possession of marijuana, two counts of public intoxication, possession of drug paraphernalia, disorderly conduct, contributing to the delinquency of a minor, and fourteen traffic offenses. The trial court determined that society needed protection from the defendant with such an extensive prior criminal history. That the defendant committed the aggravated assault while on probation for possession of marijuana and reckless endangerment served as an additional ground for this sentence to be served consecutively.

Accordingly, the judgment of the trial court is affirmed.

GARY R. WADE, PRESIDING JUDGE